



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
OFFICE OF THE ADMINISTRATIVE ASSISTANT TO THE SECRETARY  
200 STOVALL STREET  
ALEXANDRIA, VA 22332-1800

June 24, 2010

CHIEF ATTORNEY &  
LEGAL SERVICES DIRECTORATE

Jason Smathers  
185 Beacon Street, #3  
Somerville, ME 02143

Dear Mr. Smathers:

This is in response to your Freedom of Information Act (FOIA) request dated May 23, 2011 in which you requested all records concerning the selection of a person or person(s) to pray at the pentagon for the 2011 national day of prayer and the way in which the pentagon will celebrate the national day of prayer. Including, hut not limited to:

- 1) All meeting minutes where the national day of prayer was discussed
- 2) All email, memos, or other records discussing, mentioning, or declaring the selection of a person to pray at the pentagon.
- 3) All email, memos, or other records discussing , mentioning, or declaring the allowable content of a prayer for the person or persons praying on the 2011 national day of prayer.
- 4) All invitations to pray at the pentagon on the national day of prayer.
- 5) All records where pentagon employees are notified of any observance of the national day of prayer on pentagon property.
- 6) All records which discuss, mention, or declare the criteria for selecting a person to pray at the pentagon on the national day of prayer.
- 7) All correspondence between the department of defense and any representative of congress concerning the 2011 national day of prayer.
- 8) Any other record concerning the observance of 2011 national day of prayer at the pentagon.

We assigned your request our office tracking number FA-11-0520.

As a preliminary matter, our office does not maintain any records. When we receive a FOIA request, such as the one referenced above, we proceed to identify where responsive documents may be located so that they can be sent to our office for review and potential release. Often coordination with many other offices, activities, or agencies is involved to reply to a single FOIA request.

We are releasing the requested documents to you with partial redactions. The following is the reasoning for the redactions which have been made:

**Exemption (b)(6):** Exemption (b)(6) of the FOIA protects from mandatory disclosure "personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of privacy." 5 U.S.C. § 552(b)(6) (1996 & Supp. I 2002). To qualify for protection under Exemption (b)(6), records must meet two criteria: (1) they must be "personnel and medical files and similar files," (2) the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." *Id.*; United States Dep't of State v. Washington Post Co., 456 U.S. 595, 599-603 (1982). The first prong is met if the information "appl[ies] to a particular individual" and is "personal" in nature. New York Times Co. v. NASA, 952 F.2d 602, 606 (D.C. Cir. 1988). The second prong requires courts to strike a "balance between the protection of an individual's right to privacy and the preservation of the public's right to government information." United States Dep't of State v. Washington Post Co., 456 U.S. 595, 599 (1982). The "public interest" in the analysis is limited to the "core purpose" for which Congress enacted the FOIA: to "shed . . . light on an agency's performance of its statutory duties." United States Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989).

We are withholding the names of government employees under Exemption (b)(6) to protect personal privacy. See Judicial Watch, Inc. v. United States, No. 03-1160, 2004 WL 26736, at \*4 (4th Cir. Jan. 6, 2004). Under the Exemption (b)(6) balancing test, the Supreme Court held in a similar case that disclosure of employee addresses "would not appreciably further the citizens' right to be informed about what their Government is up to and, indeed, would reveal little or nothing about the employing agencies or their activities." United States Dep't of Defense v. Fed. Labor Relations Auth., 510 U.S. 487 (1994). The same is true here. Disclosure of the names and email addresses of government employees would contribute little to the public's understanding of government activities. By contrast, such disclosure would constitute a "non-trivial" and "not insubstantial" invasion of government employees' privacy interests. *Id.* at 500, 501.

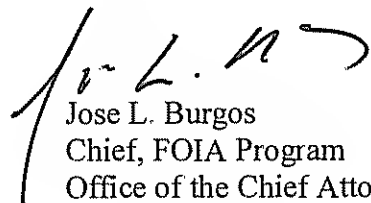
Furthermore, Department of Defense policy following September 11, 2001, allows the withholding of the names and room numbers of government employees "because of a heightened interest in the personal privacy of DoD personnel that is concurrent with the increased security awareness demanded in times of national emergency." Memorandum from D.O. Cooke, Director of Administration & Management, Office of the Secretary of Defense, Re: Withholding of Personally Identifying Information Under the Freedom of Information Act (FOIA) (Nov. 9, 2001), available at <http://www.dod.mil/pubs/foi/withhold.pdf>. As such, the names of government employees and their e-mail addresses are withheld under Exemption (b)(6).

Please be advised that you are entitled to receive two hours of search, and 100 pages of duplication, free of charge. Therefore, the usual fees associated with this type of request have not been assessed.

This partial denial is carried out as the representative of the FOIA Initial Denial Authority (IDA). The Administrative Assistant to the Secretary of the Army delegated Initial Denial Authority (IDA) under the FOIA to the Chief Attorney, to act for the Secretary of the Army on requests for records maintained by the Office of the Secretary of the Army and its serviced activities. You have the right to appeal within sixty (60) calendar days. See 32 C.F.R. § 518.17(c). If you wish to appeal this determination, write to me and I will present the matter to the IDA for consideration.

If you have questions or concerns regarding your current FOIA request, please contact Alex Lange at (703) 428-0309 or [Alexander.e.lange@conus.army.mil](mailto:Alexander.e.lange@conus.army.mil). In all correspondence please refer to FOIA number FA-11-0520.

Sincerely,



Jose L. Burgos  
Chief, FOIA Program  
Office of the Chief Attorney

Enclosure